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| In re Application of | : | |
| WATSON, et al. | : | DECISION ON PETITION |
| U.S. Application No.: 09/555,360 | : | |
| PCT No.: PCT/AU98/00991 | : | UNDER 37 CFR 1.47(a) |
| Int. Filing Date: 27 November 1998 | : | |
| Priority Date: 27 November 1997 | : | |
| Attorney Docket No.: 00P061:RC:SB | : | |
| For: SAMPLE DISTRIBUTION APPARATUS | : | |
| SYSTEM | : | |

This decision is in response to applicant's "PETITION UNDER 37 CFR §1.47(a)" filed in the United States Patent and Trademark Office (USPTO) on 26 September 2000.

BACKGROUND

On 27 November 1998, applicant filed international application PCT/AU98/00991, which claimed priority of an earlier application filed 27 November 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 June 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 25 June 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 May 2000.

On 30 May 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement; a First Preliminary Amendment; an International Preliminary Examination Report; an International Search Report and a Patent Data Entry Sheet. An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed. Applicant provided payment of the \$130.00 surcharge for filing an oath or declaration later than thirty months from the priority date. (27 May 2000 being a Saturday and 29 May 2000 being a Federal holiday in which the USPTO was not open for business, the basic national fee was considered to be timely filed on 30 May 2000.)

On 26 June 2000, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and

(b), identifying the application by the International application number and international filing date. Applicant was given one month to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 26 September 2000, applicant responded with the present petition to accept the combined declaration and power of attorney absent the signature of inventor Christian Decosterd accompanied by payment of the \$130.00 petition fee for a petition under 37 CFR 1.47(a), a petition for a two-month extension of time, payment of the two-month extension of time fee and a combined declaration and power of attorney executed by inventors: Leslie Watson, Christoph Tschopp, Ross Weaver, Ian Henderson and Pieter Kuiper.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to Item (1), applicants have enclosed a check for the required petition fee of \$130.00.

As to Item (2), the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal states that, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." Applicants have provided a declaration from Mr. Ricky Chia that said papers were sent to the last-known address of inventor Decosterd and returned stamped with the words "Return to Sender" and ticketed "Left Address." In addition, applicants have provided a copy of the envelope containing the markings. Mr. Chia has also avowed that he has no knowledge of a forwarding address nor telephone nor electronic contact details. Applicants have provided sufficient evidence to satisfy Item (2).

As to Item (3), the petition states the last known address of the non-signing inventor, Mr. Christian Decosterd.

Regarding Item (4), accompanying the petition is a declaration signed by the remaining inventors on their behalf, and on behalf of the non-signing inventor. Accordingly, applicant has satisfied the four items above and it is proper at this time to **GRANT** applicants' petition under 37 CFR §1.47(a).

CONCLUSION

Applicants' petition under 37 CFR §1.47(a) is **GRANTED**.

The application will be given an international filing date of 27 November 1998 under 35 U.S.C. 363, and a date of 26 September 2000 under 35 U.S.C. 371(c).

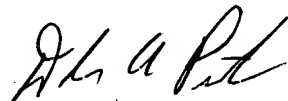
As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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